

MONTANA LEGISLATIVE HISTORY

Chapter 130 19 92

Bill H 310 S _____ Original bill & history ☒ c

H. Committee on Business + Labor

Hearing Date(s) Jan 29 ☒ c

Jan 30 ☒ c

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Date Out _____ c

S. Committee on Business + Industry

Hearing Date(s) Mar 10? ☒ c

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Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

2/03	REVISED FISCAL NOTE REQUESTED		
2/04	REVISED FISCAL NOTE RECEIVED		
2/04	REVISED FISCAL NOTE PRINTED		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	86	13
2/10	3RD READING PASSED	84	15
	TRANSMITTED TO SENATE		
2/11	FIRST READING		
2/11	REFERRED TO TAXATION		
3/04	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/10	2ND READING CONCURRED	47	3
3/11	3RD READING CONCURRED	47	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	96	1
4/11	3RD READING CONCURRED AS AMENDED	87	10
4/17	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 399		
	EFFECTIVE DATE: 07/01/97		

HB 309 INTRODUCED BY PAVLOVICH, ET AL. *LC0436 DRAFTER: MALY*

MAKE IT ILLEGAL FOR A PERSON OR BUSINESS ENTITY OUTSIDE MONTANA ENGAGED IN THE MANUFACTURE, SALE, DISTRIBUTION, OR OTHER COMMERCIAL TRADING OF ALCOHOLIC BEVERAGES TO SHIP OR CAUSE TO BE SHIPPED ANY ALCOHOLIC BEVERAGES TO A PERSON IN MONTANA WHO IS NOT LICENSED AS A WHOLESALER OR RETAILER

1/22	INTRODUCED		
1/22	FIRST READING		
1/22	REFERRED TO BUSINESS & LABOR		
1/29	HEARING		
2/13	TABLED IN COMMITTEE		
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 310 INTRODUCED BY PAVLOVICH, ET AL. *LC0437 DRAFTER: MALY*

CLARIFY THAT CERTAIN ACTIONS OF BREWERS OR BEER IMPORTERS CONSTITUTE ESTABLISHING OR MAINTAINING THE PRICE FOR RESALE OF THEIR PRODUCTS BY WHOLESALE BEER DISTRIBUTORS

1/22	INTRODUCED		
1/22	FIRST READING		
1/22	REFERRED TO BUSINESS & LABOR		
1/29	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED		
2/03	2ND READING PASSED	90	10
2/04	3RD READING PASSED	91	9
	TRANSMITTED TO SENATE		
2/05	FIRST READING		
2/05	REFERRED TO BUSINESS & INDUSTRY		
3/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	50	0
3/13	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		

3/15 SIGNED BY PRESIDENT
 3/17 TRANSMITTED TO GOVERNOR
 3/24 SIGNED BY GOVERNOR
 CHAPTER NUMBER 130
 EFFECTIVE DATE: 03/24/97

HB 311 INTRODUCED BY ORR

LC0515 DRAFTER: MARTIN

REVISE THE TAXATION OF LIQUEFIED PETROLEUM GAS

1/22	INTRODUCED		
1/22	FIRST READING		
1/22	REFERRED TO TAXATION		
1/22	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		
1/30	HEARING		
2/05	REVISED FISCAL NOTE RECEIVED		
2/06	REVISED FISCAL NOTE PRINTED		
2/07	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	92	7
2/10	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
2/11	FIRST READING		
2/11	REFERRED TO TAXATION		
3/05	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
3/10	2ND READING CONCURRED	50	0
3/11	3RD READING CONCURRED	48	2
	RETURNED TO HOUSE		
3/13	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 125		
	EFFECTIVE DATE: 01/01/98		

HB 312 INTRODUCED BY H.S. HANSON

LC1173 DRAFTER: MCCLURE

TRANSFER TO THE STATE TREASURER CERTAIN FUNCTIONS OF THE
STATE AUDITOR CONCERNING FEDERAL LAND PAYMENTS

1/22	INTRODUCED		
1/22	FIRST READING		
1/22	REFERRED TO LOCAL GOVERNMENT		
1/22	FISCAL NOTE REQUESTED (EXTENSION GIVEN FOR COMPLETION)		
2/04	HEARING		
2/04	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/15	REREFERRED TO APPROPRIATIONS		
3/20	HEARING		
3/24	TABLED IN COMMITTEE		
3/28	MISSED DEADLINE FOR 67TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 313 INTRODUCED BY KITZENBERG

LC0328 DRAFTER: LANE

AUTHORIZE RESTRICTIONS ON THE PLACE OF RESIDENCE AFTER
RELEASE OF SEXUAL OR VIOLENT OFFENDERS

1/22	INTRODUCED		
1/22	FIRST READING		
1/22	REFERRED TO CORRECTIONS SELECT COMMITTEE		

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INTRODUCED BY Carlson House BILL NO. 310 - Julian Lynch
Cocchiarella Shen Menahan

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT CERTAIN ACTIONS OF BREWERS OR BEER IMPORTERS CONSTITUTE ESTABLISHING OR MAINTAINING THE PRICE FOR RESALE OF THEIR PRODUCTS BY WHOLESALE BEER DISTRIBUTORS; AMENDING SECTION 16-3-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-3-221, MCA, is amended to read:

"16-3-221. **Illegal acts by brewers or beer importers.** It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(1) coerce, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action that would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area;

(4) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:

(a) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor for those products within 60 days; or

(b) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount that it raised the wholesale distributor's prices initially

1 when compared to the increase in the resale price that it recommended to the wholesale distributor; or
2 (c) the brewer or beer importer links or ties its participation in promotional discounts to the
3 wholesale distributor's compliance with any recommended resale price.

4 (5) cancel or terminate, except for just cause or in accordance with the current terms and
5 standards established by the brewer or beer importer then equally applicable to all wholesalers, any
6 agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or
7 entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A
8 brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications
9 among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer
10 or beer importer has the burden of proving that the classification was reasonable and not arbitrary. After
11 July 1, 1974, the provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract,
12 agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do
13 business in this state and any manufacturer or beer importer doing business with the licensed wholesaler
14 just as though the provisions had been specifically agreed upon between the wholesaler and the
15 manufacturer or beer importer."

16
17 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

18 -END-

Proponents' Testimony:

Diane Tucker, MT Beer and Wine Assn.

{Tape: 1; Side: 1; Approx. Time Count: 2.9; Comments: None.}

Tom Hopgood, MT Beer and Wine Wholesalers, EXHIBIT 5,6,7, 8

{Tape: 1; Side: 1; Approx. Time Count: 3.6; Comments: None.}

Jim Kommers, Liquor Store Owner

{Tape: 1; Side: 1; Approx. Time Count: 12.8; Comments: None.}

Karen Devine, Pres. Devine Bros. Dist. EXHIBIT 9.

{Tape: 1; Side: 1; Approx. Time Count: 15.0; Comments: None.}

Steve Browning, Anhauser-Busch

{Tape: 1; Side: 1; Approx. Time Count: 16.7; Comments: None.}

Opponents:

David Morrison, Neibauer Dist.

{Tape: 1; Side: 1; Approx. Time Count: 17.1; Comments: None.}

Brian Clark, Vice Pres. Fun Beverage, Kalispell

{Tape: 1; Side: 1; Approx. Time Count: 17.5; Comments: None.}

Informational Testimony:

Gary Blewett, Dept. of Revenue, EXHIBIT 4 AND 10.

{Tape: 1; Side: 1; Approx. Time Count: 18.2; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: 1; Approx. Time Count: 19.0; Comments: None.}

Closing by Sponsor: Rep. Pavlovich closed.

{Tape: 1; Side: 2; Approx. Time Count: 5.7; Comments: None.}

HEARING ON HB 310

Opening Statement by Sponsor: Rep. Pavlovich H.D. 37 introduced the bill.

{Tape: 1; Side: 2; Approx. Time Count: 6.7; Comments: None.}

Proponents' Testimony:

Ms. Tucker, MT Beer and Wine Assn.

{Tape: 1; Side: 2; Approx. Time Count: 7.7; Comments: None.}

Tom Hopgood, MT Beer and Wing Wholesalers. EXHIBIT 11.

{Tape: 1; Side: 2; Approx. Time Count: 8.5; Comments: None.}

Steve Browning, Anhauser-Busch

{Tape: 1; Side: 2; Approx. Time Count: 11.8; Comments: None.}

Robert Zucconi, Zekes Dist.

{Tape: 1; Side: 2; Approx. Time Count: 15.1; Comments: None.}

Opponents' Testimony:None

Questions From Committee Members and Responses:None

Closing by Sponsor:Rep. Pavlovich closed.

{Tape: 1; Side: 2; Approx. Time Count: 15.9; Comments: None.}

HEARING ON HB 331

Opening Statement by Sponsor: Rep. Loren Soft, H. D. 12
introduced the bill.

{Tape: 1; Side: 2; Approx. Time Count: 18.0; Comments: None.}

Proponents' Testimony:

Nancy David Walker

{Tape: 1; Side: 2; Approx. Time Count: 23.6; Comments: None.}

Duke Walker, EXHIBIT 12.

{Tape: 1; Side: 2; Approx. Time Count: 26.9; Comments: None.}

Kasey McKinney, Help Youth Coalition, Havre, MT. EXHIBIT 1.

{Tape: 1; Side: 2; Approx. Time Count: 27.7; Comments: None.}

Matthew Weddekind, EXHIBIT 2

{Tape: 1; Side: 2; Approx. Time Count: 30.7; Comments: None.}

Leslie Keen, Bozeman Sr. High School

{Tape: 1; Side: 2; Approx. Time Count: 32.7; Comments: None.}

Kathy Shaun, Bozeman Sr. High

{Tape: 1; Side: 2; Approx. Time Count: 34.5; Comments: None.}

Nick Ethnick, Libby, MT

{Tape: 1; Side: 2; Approx. Time Count: 35.6; Comments: None.}

Robin Morris, Dept of Health, Havre, HELP. EXHIBIT 3.

{Tape: 1; Side: 2; Approx. Time Count: 37.1; Comments: None.}

Traci Valashis, American Cancer Society, EXHIBIT 13.

{Tape: 2; Side: 1; Approx. Time Count: .2; Comments: None.}

Ken Cummings, Missoula

{Tape: 2; Side: 1; Approx. Time Count: 2.6; Comments: None.}

Cindy Lewis, MT Advisory Council Member

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 1/29/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	X		
Paul Sliter Vice Chairman	X		
Bob Pavlovich, Vice Chairman	X		
Joe Barnett	X		
Rod Bitney	X		
Sylvia Bookout	X		
Charles Devaney	X		
David Ewer	X		
Kim Gillan	X		
Billie Krenzler	X		
Bob Lawson	X		
Rod Marshall	X		
Gay Ann Masolo	X		
Wes Prouse	X		
Carolyn Squires	X		
Jay Stovall	X		
Cliff Trexler	X		
Joe Tropila	X		
Carley Tuss	X		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE Bus & Ind 1-29-97

BILL NO. HB 310

SPONSOR(S) Paulovich

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ POI	Steve Browning	Box 1697 Helena 59624	Anheuser Busch
☒ POI	Dan Molkosan	PO Box 4247 Missoula	Eagle's Dist
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Questions From Committee Members and Responses:

{Tape: 2; Side: 1; Approx. Time Count: 12.0; Comments: None.}

Closing by Sponsor: Rep. Harrington closed.

{Tape: 2; Side: 2; Approx. Time Count: 22.6; Comments: None.}

HEARING ON HB 357

Opening Statement by Sponsor: Rep. Wells, H. D. 27 introduced the bill.

{Tape: 3; Side: 1; Approx. Time Count: 1.8; Comments: None.}

Proponents' Testimony:

Greg VanHorsenn, MT Housing Providers

{Tape: 3; Side: 1; Approx. Time Count: 11.2; Comments: None.}

Rhonda Carpenter, Ex. Secy MT Housing Providers

{Tape: 3; Side: 1; Approx. Time Count: 16.9; Comments: None.}

Opponents' Testimony:

Derek Berne, MT People's Action

{Tape: 3; Side: 1; Approx. Time Count: 20.7; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 3; Side: 1; Approx. Time Count: 29.0; Comments: None.}

Closing by Sponsor: Rep. Wells closed.

{Tape: 3; Side: 2; Approx. Time Count: 7.1; Comments: None.}

EXECUTIVE ACTION ON HB 185

Motion/Vote: Rep. Sliter moved do to take HB 185 from Table.

Motion carried unanimously.

{Tape: 3; Side: 2; Approx. Time Count: 17.7; Comments: None.}

EXECUTIVE ACTION ON HB 310

Motion: Rep. Pavlovich moved do pass HB 310. Motion carried unanimously.

{Tape: 3; Side: 2; Approx. Time Count: 18.9; Comments: None.}

only tobacco product and those that sell tobacco and other things. They all are licensed in the state.

SEN. SHEA asked if there is a fiscal impact on the state? Mr. Kloker replied that the Dept. is not sure at this time. The total revenue that the vending machines bring in is \$1,375 per year. A vender that has over 10 machines, their license per year is \$50. A vender for under that number is \$5 per machine per year.

Closing by Sponsor:

REP. SOFT closed. The cost to Montana under Medicaid for tobacco related illnesses per year is \$12 million. In Montana we have over 3,000 youth that start smoking each year. We just want to try and curb that some and hold down the health care costs. Thank you for the opportunity to bring this before you. I urge your concurrence.

{Tape: 1; Side: A; Approx. Time Count: 9:28 AM; Comments: A TWO MINUTE BREAK WAS TAKEN.}

HEARING ON HB 310

Sponsor: REP. ROBERT PAVLOVICH, HD 37, BUTTE

Proponents: Mysta Tucker, MT Beer & Wine Wholesalers
Tom Hopgood, MT Beer & Wine Wholesalers
Steve Browning, representing Anheuser-Busch
Gary Blewett, Department of Revenue

Opponents: None

Opening Statement by Sponsor:

REP. ROBERT PAVLOVICH, HD 37, BUTTE. HB 310 deals with beer price fixing. Two years ago we had this same bill in here. We passed it out and ended up with a little leak in the dam. We need to plug the dam up a bit. The new language on page 2 clarifies what has been happening. There is a brewer in the state who figured out how he could get around the beer price fixing. There are some proponents. My written testimony will be submitted (EXHIBIT 3).

Proponents' Testimony:

Mysta Tucker, MT Beer & Wine Wholesalers. We agree that HB 310 needs to be passed. As independent business people, we believe we have the right to set our own pricing. Thank you.

Tom Hopgood, MT Beer & Wine Wholesalers. As REP. PAVLOVICH said, this bill grows out of a bill that was heard before this committee in the last session which grew out of a problem that we

were having with the breweries in retaliatory pricing. They would recommend a price to the wholesaler and then the wholesaler would not follow that recommendation. The brewer would then impose a retaliatory price increase. Everyone was clear on the statement of that bill. One brewer has arguably figured out a way around this and that is to say, here is our recommended price and, oh by the way, if you don't follow this recommended price, we won't give you any promotional discounts. To me, this is price fixing. We have been in communication with the Dept. of Revenue, the Liquor Division about this problem and they have, at least, agreed with our informal interpretation of this action. The brewer disagrees and there is a little bit of wiggle room in there that can be made so our alternative is to bring a lawsuit against the brewer for a declaratory judgment which would take at least a year or two, but we feel the easier way to handle this was to come back and make a simple change to the original bill and provide that it is unlawful for a brewer to link his participation in a promotional discount following a recommended price. The industry has been included in the preparation of this bill and they are in support of this bill. One brewer, Anheuser-Busch in particular, in a promotional discount, does require that the discount that it gives to the wholesaler be passed on to the retailer. This bill is not aimed at that. We view that as a condition of the discount rather than the fixing of a price. I will hand in my written testimony (EXHIBIT 4). I will also hand in a letter from my firm to the Liquor Division as pertinent information (EXHIBIT 5). Thank you.

Steve Browning, Anheuser-Busch. We appear in support of HB 310 and recommend the committee be concurred in HB 310. The whole topic of this bill is very complicated for the lawyers to deal with. When you look at the bill, we are dealing with existing law. On line 12, the title says it all--illegal acts by brewers. Anheuser-Busch does not want to do anything that is illegal so we are very sensitive to make sure that what they are doing is legal and they want to make sure that when the laws are changed that they are in compliance with the law. We appreciate Mr. Hopgood's reference to the concerns that Anheuser-Busch raised. I would like to read a short paragraph from the A-B legal counsel describing what their practice is. "Anheuser-Busch does participate in price promotions in Montana making special allowances that are offered to Montana wholesalers. In the course of pricing, A-B sets out a recommended price to the retailer to the wholesaler (PTR--price to retailer). During the promotion we offer the wholesaler an opportunity to discount the product. In the course of offering the discount, we advise the wholesaler that we will share in the cost of the discount on a 50-50 basis up to a stated maximum amount per case of beer depending upon the brand. This 50-50 split is contingent upon the wholesaler passing the discount down to the retail level. The wholesaler is free to choose to what extent, if any, they will participate in the retail promotion that A-B offers." I appreciate your listening to our testimony.

Opponents' Testimony: None

Informational Testimony:

Gary Blewett, Administrator, Liquor Division, Dept. of Revenue.
I am not appearing as a proponent per se, but wanted to be on the record that Mr. Browning did send me a copy of the paragraph that he just read to you. We evaluated the paragraph in light of the proposed change and the existing law and found nothing in that paragraph that would be in violation of this piece of legislation.

Questions From Committee Members and Responses:

SEN. BEA MCCARTHY asked if there was a contract between wholesaler and retailer. REP. PAVLOVICH replied that there is not a contract. There is a seven day law that we have to pay for our order and we can buy from any wholesaler in the state.

Closing by Sponsor:

REP. PAVLOVICH closed. I thank you for a fine hearing and you won't be seeing me again in your committee.

{Tape: 1; Side: A; Approx. Time Count: 9:40 AM; Comments: N/A.}

HEARING ON HB 330

Sponsor: REP. WILLIAM WISEMAN, HD 41, GREAT FALLS

Proponents: Nathan Tubergen, MMIA
Bob Worthington, MMIA
Howard Bailey, Schools Group Workers Compensation Program

Opponents: None

Opening Statement by Sponsor:

REP. WILLIAM WISEMAN, HD 41, GREAT FALLS. For those of you who were here two years ago, we met in an atmosphere of almost crisis when Orange County, California was going bankrupt because of their involvement of investments in derivatives. We did a survey of some counties here in Montana and found a lot of counties had been speculating with long term investments with short term money. They were trying to beat the market and what precipitated the crisis two years ago was the fact that the Federal Reserve felt the economy was getting to be too frothy. Mr. Greenspan tapped the breaks by raising interest rates and that caused the value of those long term bonds to drop. We changed considerably the law allowing not only what could county and city governments invest in but more importantly how long they could invest. We

ten years but with a six year average. Now we are very restricted. We would appreciate your support.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. CASEY EMERSON asked what the difference is between interest rates on a ten year and a five year treasury note? Mr. Tubergen said that it would be in the neighborhood of 1% or less. It depends again on the market. Right now the long term is down but looking at the long range it could be as high as 2%. It would be looked on as an extra yield by laddering.

Closing by Sponsor:

REP. WISEMAN closed. On the third page of the bill it shows the restrictions that were put on as to what investments could be made. The only group that we have let loose with this are on page 2, line 17 through 20. It is a very small group.

{Tape: 1; Side: B; Approx. Time Count: 9:49 AM; Comments: LOSE ONE SENTENCE OF CLOSING.}

The six year average will keep them from backloading the whole thing. Again, this is money that they may need at any one time so that is the reason we want them to have the ladder. It is a good program. Hope you can support the bill.

EXECUTIVE ACTION ON HB 330

Motion/Vote: SEN. STEVE BENEDICT MOVED HB 330 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 310

Motion/Vote: SEN. BEA MCCARTHY MOVED HB 310 BE CONCURRED IN.
THE MOTION CARRIED UNANIMOUSLY: 6-0

EXECUTIVE ACTION ON HB 331

Motion: SEN. MCCARTHY MOVED HB 331 BE CONCURRED IN.

Amendments: SEN. MCCARTHY MOVED TO AMEND HB 331 (EXHIBIT 6)
HB033101.abc.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 3-7-97
BILL NO. HB 310

SPONSOR'S STATEMENT IN SUPPORT OF HB 310
REPRESENTATIVE BOB PAVLOVICH

This bill clarifies the statute which controls relationships between brewers and beer distributors.

Some of you will recall that last session we had a bill which dealt with the same issues. The language enacted in 1995 appears on pages 1 and 2 of the bill, beginning at line 23 of page 1. Essentially, the 1995 legislation made it illegal for a brewer to fix or maintain the price at which a wholesaler sells beer to a retailer.

We thought we had the problem pretty well fixed and at least insofar as most of the major brewing companies are concerned, the law is clear and is being followed.

However, one brewer believes it has found a way around the law and has made its participation in promotional discounts conditional on the wholesaler complying with its recommended price to retailers. This bill, on page 2 at lines 2 and 3 would solve that problem and close the loophole once and for all.

We ask you for a do pass recommendation on this bill.

STATEMENT OF TOM K. HOPGOOD, EXECUTIVE SECRETARY
MONTANA BEER & WINE WHOLESALERS ASSOCIATION
IN SUPPORT OF HB 310

As noted by Representative Pavlovich, this law is a clarification of a bill which was passed by the 1995 Legislature.

Very briefly, the background of this situation is that it is federal and state policy that the manufacturing, wholesaling, and retailing levels of the alcohol distribution industry be completely separated. We call this the three-tier system. Each tier, manufacturing, wholesaling, and retailing is to be completely separated and this is a theme which exists in all alcohol distribution laws in this country and in this state.

One of the hallmarks of the law is that a wholesaler is absolutely free to conduct his business independent of interference from the brewery or beer importer. This freedom extends to setting the price at which it sells product to the various retailers in its territory.

What we faced in the last session was retaliatory pricing from breweries when the wholesaler did not meet the breweries' recommended price. Essentially what Sections 4(a) and (b) provide are the following:

It is unlawful for a brewer or importer to fix or maintain the price at which a wholesaler sells product to a retailer.

Although a brewer or importer may "recommend" a price at which the wholesaler should sell product to retailers, it can do nothing more than that.

The specific problem of retaliatory pricing is addressed in subparagraphs (a) and (b) which essentially state that a brewer may not raise its price to wholesalers based upon a wholesaler not meeting the brewer's recommended price.

The statute has worked extremely well insofar as retaliatory pricing is concerned. It has not worked quite as well insofar as the general prohibition on price fixing or maintenance is concerned. We believe that the statute is clear on its face that any sort of price fixing or maintenance is prohibited. We are joined in that belief by the major brewers selling product in Montana, including Anheuser-Busch, the Miller Brewing Company, and the Coors Brewing Company.

There is, however, one brewing company which believes it has found a way around this statute by making its participation in promotional discounts contingent on the wholesaler meeting or beating its "suggested" price to retailers.

In simplified form, what happens is that it is a common practice in the beer distribution industry to allow promotional discounts from time to time. For example, in connection with a given holiday or season, a wholesaler may offer certain of its products to retailers at a discounted price. The discounted price is available for a certain period of time. The object of the promotional discount is to induce retailers to purchase additional product and to pass the lower price on to consumers who, in turn, because of the lowered price, are more likely to buy the promoted product. The consumer, having tried the product

as the result of the promotion, is more likely to purchase the product when the promotion is over and the base price is once again in effect. As part of its promotional pricing, the brewer typically shares in the discount which the wholesaler offers to retailers. If the brewer's participation in the discount is conditional on the wholesaler meeting or beating the brewer's usual recommended price to retailer, we believe that it is clear that the brewer has "fixed" the wholesaler's price to the retailer.

This matter has been a topic of some discussion with the particular brewer in question and I will submit to the committee a copy of a March 12, 1996 letter which I wrote to the Department of Revenue. The situation is explained in a great deal more detail.

I would note that the Department of Revenue did agree with our analysis and found that what the brewer was doing in this particular case did violate the statute. However, the brewer disagreed and would not cease its endeavors and they are ongoing to this day. We are thus faced with having to bring a lawsuit which, for an association like ours in a small state, is extremely time consuming and expensive. After much discussion, it was decided to simply plug the loophole and take care of it by an amendment to the statute.

The amendment this bill proposes is on page 2, lines 2-3. It simply states that brewers and importers may not condition

their participation in promotional discounts on the wholesaler meeting its pricing recommendations.

I would add that we have been in close consultation with Anheuser-Busch, Coors, and the Miller Brewing Company about this bill and they are in complete agreement about the effect of the law and do not oppose this bill.

LUXAN & MURFITT

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March 12, 1996

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License Bureau Chief
Liquor Division
Department of Revenue
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Helena, MT 59624-1712

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 5

DATE 3-7-97

BILL NO. HB 310

RE: Price Fixing Statute, § 16-3-221(4), MCA

Dear Diana:

We spoke several weeks ago about brewer controlled prices which wholesalers charge retailers. I have looked at the matter more closely since we talked and am even more convinced than ever that what we are seeing on the part of at least two brewers is flatly prohibited by § 16-3-221(4), MCA.

The MBWWA, at least for the time being, would prefer to handle this matter informally. Hopefully, after you have had the opportunity to review this letter with department counsel, you will agree with my analysis and at least arrive at a preliminary opinion that what these brewers contemplate is not allowed under the statute. At that point, I would propose to informally communicate that position to the brewers and if everything falls into place, they will abandon their proposed course of action.

Although I am putting my thoughts down on paper, I do not view this situation as different from the numerous occasions upon which I have requested an "advisory" opinion on a particular situation and based upon that opinion, have been able to resolve the matter without formal proceedings. However, if you are uncomfortable with proceeding in this fashion, it would not be difficult to convert the remainder of this letter to a more formal petition for a declaratory ruling. We are proceeding in this informal manner in the hope of saving the time, effort, and expense of a more formal proceeding. Anyway, after you have had the opportunity to look at this matter and to talk with Bruce, please give me a call.

The facts of this matter are simply stated as follows:

Ms. Diana L. Koon
March 12, 1996
Page 2

1. Wholesaler is a duly licensed beer wholesaler pursuant to § 16-4-103, MCA.

2. Brewer is a duly licensed brewer pursuant to § 16-4-101, MCA.

3. Wholesaler and brewer have entered into a contract pursuant to § 16-3-222, MCA, whereunder brewer sells and delivers its products to wholesaler and wholesaler sells and delivers these products to licensed retailers in its assigned area.

4. Brewer sets the prices at which it sells its products to wholesaler.

5. Brewer "recommends" the prices at which wholesaler sells those products to licensed retailers in its assigned area. The wholesaler's price to the retailers is called PTR.

6. It is a common practice in the beer distribution industry to allow promotional discounts from time to time. For example, in connection with a given holiday or season, a wholesaler may offer certain of its products to retailers at a discounted price. The discounted price is usually available for a certain period of time.

7. The object of the promotional discount is to induce retailers to purchase additional product and to pass the lower price onto consumers who, in turn, because of the lower price, are more likely to buy the promoted product. The consumer, having tried the product as a result of the promotion, is more likely to purchase the product when the promotion is over and the base PTR is once again in effect.

8. As part of its promotional pricing, brewer shares in the discount which wholesaler offers to retailers. For example, the usual PTR is \$10 per case. As a special promotion, wholesaler offers to sell the product to retailers at the special promotional price of \$8.50 per case for ten days. The special promotional price is \$1.50 below the usual PTR. The rate at which brewer shares the discount with wholesaler is 50%. Brewer's responsibility is for 75¢ of the discount on each case sold at the promotional price. The brewer's share of this discount is rebated to the wholesaler by the brewer.

9. The brewer's participation in the discount is conditional on the wholesaler meeting or beating the brewer's recommended PTR.

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The key fact is contained in the preceding paragraph 9. Our basic position is that by making the brewer's participation conditional on the wholesaler meeting or beating the brewer's recommended PTR, the brewer has "fixed" the wholesaler's PTR.

The legal conclusions which must be drawn from the above-stated facts are:

1. § 16-3-221, MCA, specifically provides:

It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

.

(4) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's product.

2. Brewer is subject to the provisions of § 16-3-221, MCA.

3. In tying its participation in promotional discounts to the wholesaler meeting brewer's recommended PTR, brewer is attempting to unlawfully fix or maintain the price at which a wholesale distributor sells the brewer's products under § 16-3-221(4), MCA.

We would respectfully suggest that the facts are uncontrovertible and the conclusions inescapable. The issue is simply stated as whether conditioning brewer's participation in promotional discounts on wholesaler's compliance with brewer's recommended PTR constitutes fixing or maintaining the wholesaler's prices.

Price fixing is a term usually used and understood in the context of antitrust law. As such, the prohibition is usually understood as a horizontal restraint which prevents entities making up a single tier in a distribution system from fixing a price, whether it be manufacturer's price, wholesaler's price, or retailer's price. As a horizontal restraint, the prohibition is understood as, for example, preventing a group of brewers from setting a specified price at which they would sell product to wholesalers. Price fixing can also be understood in the context of a vertical restraint in which an entity in a single distribution chain (e.g., the brewer) is prohibited from fixing or maintaining the price at which another entity in the same chain (e.g., the wholesaler) sells the product. It is in this sense,

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as a vertical restraint, that price fixing in the context of § 16-3-221(4), MCA, is to be primarily understood.

The public policy behind the horizontal price fixing prohibition in the field of antitrust law is to ensure that prices freely respond to market conditions and that they are not set artificially by suppliers of the product.

Although there is an element of free market economics embodied in the public policy behind the vertical restraint issue, the overriding policy in the context of the Montana Beer Code is the complete separation of tiers in the distribution scheme. I am sure you are at least as familiar as I am with the various reasons and policies behind this separation. As such, I will not dwell on those matters but can, if you request, provide further information.

Price fixing, as understood in the context of federal antitrust law:

[M]eans a combination or conspiracy formed for the purpose and with the effect of raising, depressing, fixing, pegging or stabilizing the price of a commodity in interstate commerce. The test is not what the actual effect is on prices, but whether such agreements interfere with the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment.

Bailey's Bakery, Ltd. v. Continental Baking Co., 235 F. Supp. 705, 720 (D.C. Haw. 1964).

We would emphasize that this matter is not, at this point, a federal antitrust case. As to the requirement of a combination, we are not at this time alleging that the brewers involved have entered into a combination or conspiracy to fix prices.¹ We would also emphasize that this is not a state antitrust case at this time. Under the state antitrust statute, a combination or conspiracy is not required.

Although this section is modeled after § 1 of the Sherman Act, it differs in one critical respect. The

¹We would note that the brewers involved have recently announced a merger with each other. At this point, based on the merger and the timing of the pricing scheme, we can only speculate about the existence of collusion.

Sherman Act requires two or more persons to be involved in the unlawful trade restraint; in effect, a conspiracy must exist. 15 U.S.C. § 1; *Copperweld Corp. v. Independence Tube Corp.* (1984), 467 U.S. 752, 767-68, 104 S. Ct. 2731, 2739-40, 81 L. Ed. 2d 628, 641. However, the Montana counterpart states that a "person" may violate this section. Thus, the Montana statute on restraint of trade facially appears to be broader than the Sherman Act, as one person acting alone may violate the Montana statute.

Smith v. Video Lottery Consultants, 260 Mont. 54, 57, 858 P.2d 11, 13 (1993).

Although there may be elements of trade restraint involved, we are presently basing our analysis strictly on the Beer Code, which does not require a combination; which does not require an agreement; which does not require a conspiracy; which does not require interstate commerce; and finally and perhaps most important, which does not require a restraint of trade.

All that we are talking about is, per the classic definition set forth above, an action intended to and with the effect of "raising, depressing, fixing, pegging or stabilizing the price of a commodity" 235 F. Supp. at 720. The test is whether the action interferes with the freedom of traders and thereby restrains their ability to sell in accordance with their own judgment. 235 F. Supp. at 721.

We would also emphasize the provisions of § 16-3-221(1), MCA, whereby it is unlawful for a brewer to: "coerce, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action that would violate or tend to violate any of the laws of this state" Taking into account the classic definition of vertical price control being an attempt to control or fix a resale price, there is little doubt that the brewer has violated the price fixing statute. See generally *Knuth v. Erie-Crawford Dairy Co-Op, Ass'n*, 326 F. Supp. 48, 53 (W.D. Penn. 1971); *St. Petersburg Yacht Charters, Inc. v. Morgan Yacht, Inc.*, 457 So. 2d 1028, 1043 (Fl. App. 2 Dist.), for definitions of vertical restraint.

The long and the short of this situation is that the brewer is intending to fix the wholesaler's price to retailers by allowing or disallowing promotional discounts based directly upon the wholesaler's compliance with the brewer's recommended PTR. Given the economic realities of beer wholesaling, brewer participation

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March 12, 1996
Page 6

in promotional discounts is an absolute necessity to effective competition.

That being the case, the more we look at this situation, the harder it becomes to imagine a clearer case of price fixing.

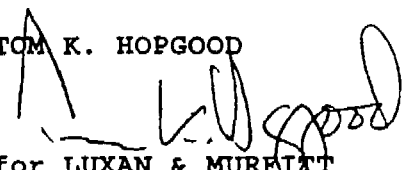
We can expect the brewers to argue that their pricing scheme expressly allows the wholesaler to set its own PTR. However, that does not obviate the fact that the brewer's participation in the promotional discounts is expressly contingent upon the wholesaler meeting the brewer's "recommended" price. It seems only logical that if it is truly a recommendation, no sanction would follow if the recommended price is not adopted. On the other hand, if a sanction does follow, it is abundantly clear that it is much more than simply a "recommended" price. In this case, the "recommended" PTR is in fact a mandatory price which the wholesaler must follow. Given the necessity of brewer participation in the discount, the wholesaler must either conform or be non-competitive. The wholesaler really has no choice.

To summarize, we believe that this is a blatant case of price fixing and would respectfully suggest that the same may be disposed of upon the Division forming a preliminary opinion without the necessity of the MBWWA having to seek a formal declaratory ruling.

We would appreciate hearing from you at your earliest convenience.

Sincerely,

TOM K. HOPGOOD



for LUXAN & MURPHY

TKH/jb

DATE 3-7-97



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1997

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill 310 (third reading copy -- blue), respectfully report that House Bill 310 be concurred in.

Signed: _____

John Hertel
Senator John R. Hertel, Chair

TS
SA Amd. Coord.
Sec. of Senate

Senator Shea
Senator Carrying Bill

501142SC.STS

DATE 3-7-97

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: HB ; 310
HB 330, HB 331

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
NATHAN Tubergen	MAIA	330	✓	
Bob Worthington	MAIA	330	✓	
Barb Gullvick	Lobby Comm Int	331	✓	
Chad Pan	Andersson	331		
Steve Yeakel	Montana Council For Child Health	331	✓	
David Hemion	MT Dental Assoc.	331	✓	
David Kiezling	Montana Dental Assoc	331	✓	
Bede J. Kovitt	MT Med. Assn	331	✓	
Howard Dandberg	Schools Group	330	✓	
DARVYL PERLICK	DPHHS	331	✓	
Tom Hopgood	MRBWA	310	✓	
Mystra Tucker	MRBWA	310	✓	
Bill Klokner	DOR HB 330	331	informational	
Gary Blewett	DOR	310	✓ information	
Steve Browning	Anheuser Busch	HB 310	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY